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No. 106.

(Brf. of Hamlin for Def'g in Error.)

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

CORNELIUS K. G. BILLINGS and ALBERT M. BILLINGS RUDDOCK,
Plaintiffs in Error.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error.

106.

Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

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For Defendant in Error.

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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

THE ISSUE PRESENTED.

The constitutionality of the inheritance tax law of Illinois, as tested by the Fourteenth Amendment to the Constitution of the United States, is challenged and again brought to this Court for review upon the ground that, by its

provisions, a tax is imposed upon the privilege of succession to a life estate or an estate for a term of years, with the remainder to the lineal heirs of decedent, while by its expressed exception the privilege of succession to a life estate or an estate for a term of years, with remainder to the collateral heirs of decedent or to a stranger in blood, is not subject to a tax, but exempted therefrom; and the case is argued upon the theory that the privileges, which in one case is taxed and the other exempted, are of the same class and identical, and that the law is not uniform, but discriminating in its operation.

That part of the Act in question involved by the issue presented is found in Sections 1 and 2, and is as follows:

> "SEC. 1. All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contem.

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plation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State; and and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person and at and after the same rate for every less amount: *Provided*, that any

estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, neice, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: *Provided*, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

"SEC. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father,

husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or (and) remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: *Provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the people of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the

payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county: *Provided, further*, that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years." (Hurd's Statutes Illinois, 1901, p. 1511.)

We respectfully contend that there is a clear distinction, based upon a reasonable and substantial difference, between the class that may be designated as life estates with remainder to the lineal descendants of the beneficiary, and the class which may be designated as life estates with remainder to the collateral heirs of the decedent or stranger in blood; that such difference clearly distinguishes one class from the other and forms a correct basis for the classification made—and the law, operating alike upon all in each class, is not in conflict with the Federal constitution or the constitution of Illinois, but in harmony with both, and valid.

By the general terms of the act in question the privilege of succession to all beneficiaries is taxed, while by express exception the privilege of succession to a life estate by certain enumerated beneficiaries with the remainder to a collateral heir of decedent or stranger in blood is excepted from the operation of the law. The tax complained of is imposed by virtue of the general terms of the law, and objected to because beneficiaries of another, or as is contended the same, class are excepted. The exception is the only part of the Act that can be complained of, and, if that is held to be inconsistent with the limitations of the constitution, that part only must fall, leaving all within the operation of the law, and the judgment of the Supreme Court of Illinois to be affirmed.

The constitutionality of the Act in question and its various provisions, including the one involved herein, has been heretofore elaborately argued before and carefully considered and fully sustained by this honorable Court, and is not open to review in this case.

I.

The sovereign power of the state to impose a tax upon the privilege granted by it to its citizens to succeed to the property of a decedent and the right to classify in reference to the amount of tax imposed or the exemptions therefrom are questions no longer subject to debate and there remains to be discussed the single question presented by the record as to the propriety of this classification made by the act of the general assembly of the state of Illinois.

The act in question has excluded from its operation life estates or estates for a term of years to the mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant of the testator where the remainder goes to the collateral heir of the decedent or to a stranger in blood, leaving within the operation of the law and subject to the tax imposed thereby upon the privilege of succession to a life estate, by, in the case at bar, a son and grandson of testator, with the remainders to, as is construed by counsel for plaintiffs in error, the children of such son and grandson.

That those beneficiaries of the testator who are by the act excluded from its operation are in a class which is clearly distinguished from all others by recognized and substantial differences existing between them is easily seen.

Counsel for plaintiffs in error have urged that the right to succeed to a life estate is the same in all cases, that all life estates are of the same class, and base their argument in support of this contention upon the pecuniary value of such life estates to the beneficiaries. Bearing in mind that the tax is not one on property, but one on the right to transmit and inherit, it is readily seen that the question of the actual pecuniary value solely to the beneficiary himself, is not material to the discussion of this question, nor to a consideration of the law, except for the purpose of determining the amount of tax to be assessed. The right of succession enjoyed by different persons to estates of the same pecuniary value may be differently taxed, provided that each belonged to a different class. It will be conceded by the distinguished counsel for plaintiffs in error that the legislature may impose one tax upon the right of succession by a lineal descendant to a certain

inheritance, a different tax upon the right of succession by a collateral heir to the same, and a still different tax upon the right of succession by a stranger in blood to a like inheritance. Indeed, under the act in question the succession by a lineal descendant to a bequest of $20,000 is exempted, while the succession to a like amount by a collateral is taxed $400, and the succession to the same amount by a stranger in blood is taxed $800, and the propriety of this classification by the law is not and cannot be questioned. So that the argument of counsel for plaintiffs in error that the act in question invades the constitutional limitation as to equality and uniformity within the same class, because the pecuniary benefit to their clients, who are taxed upon their right of succession, while some others under the law who receive the same pecuniary benefit are exempted, is erroneous, because they have not applied the proper test to determine whether or not plaintiffs in error are discriminated against as compared with others of the same class. The classification may be as to the amount of the inheritance received. It may be based upon the relationship of the beneficiaries

to the testator. It may be based upon any reasonable and substantial difference which distinguishes those falling in one class under the law from those in the other. In the case at bar plaintiffs in error are lineal descendants of decedent and succeed to life estates with remainder to their children. They do not belong to the same class as a beneficiary who succeeds to a life estate with the remainder to the collateral heir of the decedent or to a stranger in blood, for the reason that they do not take under the same conditions, the one taking for life with the condition that the fee shall pass on in his lineal line, and the other taking for life with the condition that the fee upon his death passes out of the lineal line and to another. In the one case his succession to the life estate preserves both the life estate and the remainder in his lineal line of descent so that upon his death the estate passes in fee to his children, while in the other he reserves in the lineal line a bare life estate which is extinguished by his death, leaving nothing of the estate to pass to his children or lineal heirs. The class to which plaintiffs belong and the class exempted by the act are further distinguished by reason of the fact

that they do not succeed to a privilege to the same extent, as contended for by counsel.

In the case at bar it is clearly seen that the son succeeded to a privilege far greater in extent than he would had the testator provided that the remainder should upon his death go to a stranger in blood. In the present case the son has the privilege of succeeding to the life estate with the additional consideration that by such succession he retains in himself and in his line both the life estate and the remainder. Or he may avail himself of the privilege granted to him of renouncing the life estate or of immediately transferring it to his children and thus immediately vesting in his children both the life estate carved out by the testator and the remainder, being the whole estate.

The inheritance tax is imposed upon the right of the devolution of property and this includes the right in the testator to transmit the property, as well as the right of the legatee to receive it.

The Statute has classified beneficiaries and has provided different rates of taxation upon the right of succession of property to different

classes of relations and to strangers in blood, the highest rate being applied when the transmission is to the stranger in blood.

The statute says in effect to the testator, you may transmit your property to your mother, father, widow, brother, sister, child or lineal descendant for life or for a term of years with remainder to your lineal descendants and for this privilege, your estate shall pay a tax based upon the value of the life estate or estate for years and upon the value of the remainder. If, however, you devise your estate for life or a term of years to the same class of persons with remainder to your collateral heirs or to strangers in blood, the remainder will be taxed at a higher rate than the remainder is taxed under the first case supposed; this remainder being taxed at such higher rate will be held to be a sufficient tax upon the right of disposition of your property and no tax will be computed upon the value of the life estate so devised. This classification seems to be reasonable and we submit to the court that it is one that the legislature had the right to make and that it is not in conflict with any provision of the State or Federal Constitution.

The contention of counsel for plaintiffs in error that the construction placed upon this law by the Supreme Court of Illinois will work a hardship upon the plaintiffs in error as against other life tenants where the remainder is to callateral heirs or strangers is without force as these plaintiffs in error have no interest in or right to the bequest made until the tax is paid.

Property was devised to the United States Government and payment of the inheritance tax was resisted on the ground that the property of the United States could not be taxed by the States.

This Court said—

> "This case raises the simple question whether property bequeathed to the United States is subject to an inheritance tax under the laws of New York."

The Court discussed the question at length and said—

> "Certainly, if it be true that the right of testamentary disposition is properly statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax

is not upon the property in the ordinary sense of the term but upon the right to dispose of it and it is not until it has exhausted its contribution to the State that it becomes the property of the legatee."

United States vs. *Perkins*, 163, U. S., 625.

In the same case the Court quote from *State* vs. *Dalrymple*, 70 Maryland, 924—

"This, therefore, is not a tax upon the property itself but is merely the price exacted by the State for the privilege accorded in permitting property so situated to be transferred by will or descent or distribution."

Other cases to the same effect are also there cited and the Court say further—

"We think it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax and it is only upon this condition that the legislature assents to a bequest of it."

So also it is a fixed law that a State has not the power to tax obligations of the United States. Where a life estate in United States bonds was devised and an inheritance tax was assessed thereon, it was contended that the tax was unauthorized because the bonds were exempt from taxation.

The question was before this court in the case of *Plummer* vs. *Coler*, 178 U. S., 115, and after citing various cases in the State courts and in this court holding that the inheritance tax is one on franchise or on the right of succession and not on the property and holding that the inheritance tax is lawful and may be imposed even though the property devised be United States bonds, the Court said—

> "We may regard it as established that the relation of the individual citizen and resident to the State is such that his right, as the owner of property, to direct its descent by by will or by permitting its descent to be regulated by the statute, and his right, as legatee, devisee or heir, to receive the property of his testator or ancestor are rights derived from and regulated by the State and we are unable to perceive any such distinction that can be drawn between the power of the State in imposing taxes upon

franchises of corporations, composed of individual persons, and in imposing taxes upon the right or privilege of individuals to avail themselves of the right to grant and to receive property under statutes regulating the descent of the property of decedents."

Again the Court say—

"For, after all, what is an inheritance tax but a debt exacted by the State for protection afforded during the lifetime of the decedent? It is often impracticable to secure from living persons their fair share of contribution to maintain the administration of the State, and such laws seem intended to enable it to secure payment from the estate of the citizen when his final account is settled with the State. Nor can it be readily supposed that such obligations can be evaded or defeated by the particular form in which the property of the decedent was invested."

The Court held that the inheritance tax was not defeated by reason of the fact, that the property consisted of United States bonds.

The Court then quoted from *State* vs. *Dalrymple*, *supra*—

"That the tax is not a tax upon the property itself, but upon its transmission

by will or by descent, is also held both in New York and in several other States, *Matter of the Estate of Swift*, 137 N. Y., 77, in which it is said that the 'effect of this special tax is to take from the property a portion, or percentage of it. for the use of the State, and I think it quite immaterial whether the tax can be precisely classified with a taxation of property or not. It is not a tax on persons.'

Matter of Hoffman, 143 N. Y., 237.
Schoolfeld's Executor vs. *Lynchburg*, 78 Virginia, 366.
Strode vs. *Commonwealth*, 52 Penn., St., 181.
In *re Cullum* 145 N. Y., 593.

In this last case, as well as in *Wallace* vs. *Myers*, 38 Fed. Rep., 184, it was held that, although the property of the decedent included United States bonds, the taxes might be assessed upon the basis of their value, because the tax was not imposed upon the bonds themselves, but upon the estate of the decedent, or the privilege of acquiring property by inheritance.

Eyre vs. *Jacob*, 14 Grattan, 422.
Dos Passos on Inheritance Tax Law, Chap. 2, and cases cited.

"Such a tax was also held by this Court to be free from any constitutional objec-

tion in *Mager* vs. *Grima*, 8 How.. 490, Mr. Chief Justice Taney remarking that 'the law in question is nothing more than the exercise of the power which every State and sovereignty possess, of regulating the manner and terms under which property, real and personal, within its dominion may be transferred by last will or testament, or by inheritance and of prescribing who shall and who shall not be capable of taking it If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposses to be required by its interests or policy.' To the same effect is *United States* vs. *Fox*, 94 U. S., 315.

"We think it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it"

And said—

"One of the propositions recognized in that case applicable to the present one is

> that a state tax that would be invalid if imposed directly on a legacy to the United States, may be valid if the amount of the tax is taken out of the legacy before it reaches the hands of the government—the theory of such a view apparently being that the property rights of the government do not attach until after the tax has been paid, or until the condition imposed by the tax law of the State has been complied with. Such is also the case in respect to the legacy to Ella Plummer Brown, as the statute in question distinctly makes it the duty of the executor to pay the amount of the tax before the legacy passes to the legatee."

The Court also held that a tax imposed against corporations of another State upon the capital employed in the State of New York was not obnoxious because of the fact that such capital consisted of imported goods in original packages.

New York vs. *Roberts*, 171 U. S., 658.

In that case the Court also cited approvingly the case of *Magoun* vs. *Illinois Trust and Savings Bank*, *supra*, and concluded that the fact that property devised consists in Federal securities does not invalidate the tax or render inapplicable the law under which it is imposed.

It follows from these and other cases that plaintiffs in error have no right to the legacy before the inheritance tax is paid, which entitles them to complain of the tax as against the State. They have no title until the tax is paid. The tax is not imposed upon their property nor upon them, but upon the right of their testator to devise the estate and the classification seems to be one which might be made and within the holdings of this Court in *Magoun* vs. *Illinois Trust and Savings Bank* and other cases.

The Supreme Court of Illinois, in the case at bar, (189 Ill. page of opinion 481; record 104), in its consideration of the question presented to this Court said:

> "Counsel on both sides seem to agree that, subject to the widow's dower, and after her award and one-third of the property were set off to her, Cornelius K. G. Billings was entitled to and took two thirds of the estate for life and Albert M. Billings Ruddock one-third for life, and the only point made on the appeal by these appellants is, that under the statute these life estates, which were so adjudged and held by the Court below to be liable to the tax, were not under the statute,

liable at all. It is not denied that by section 1, standing alone, above quoted, they would be liable, but it is claimed that by section 2 they are excluded from the provisions of section 1. Section 2, or so much of it as affects this question, is as follows: 'When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or upon the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.'

"The point made is, that by the express terms of this section all life estates are exempted from the tax imposed by section 1,

whether the remainder be to lineals or collaterals. But we have held that the proper reading of the clause, 'or remainder to the collateral heir,' etc., should be read, *and remainder*, etc., (*Ayers* vs. *Chicago Title and Trust Co.*, 187 Ill., 42), and that the meaning of that provision is, that when the bequest is to the mother, father, husband, wife, brother and sister, widow of the son, or a lineal descendant, during the life or for a term of years, *and* remainder to the collateral heir of the decedent or to the stranger in blood, etc., such estate for life or for a term of years shall not be subject to any tax, but that where the remainder is to lineals the prior estate would, under section 1, be subject to the tax.

"But it is contended that this construction renders the statute unconstitutional, under both the State and the Federal Constitutions; that it violates Section 2 of Article 2, of the Constitution of this State, which provides that 'no persons shall be deprived of life, liberty or property without due process of law,' and Section 1 of Article 9, because the law imposing the tax is not 'uniform as to the class upon which it operates,' and the First Section of the Fourteenth Amendment to the Constitution of the United States, which provides 'that no *state* shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its juris-

diction the equal protection of the law.' The constitutionality of the statute has been established by the decisions of several cases—

Kochersperger vs. *Drake*, 167 Ill., 122;
Ayers vs. *Chicago Title and Trust Co.*, *supra*;
Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283,

and we shall consider only the question whether, by the classification made there was any arbitrary or unwarranted discrimination between life tenants by the statute imposing the tax.

"It is said that the statute discriminates between life tenants with remainder to lineal descendants and life tenants with remainder to collateral heirs, by imposing the tax on the first and excluding the second from its operation. But we cannot see that this is a mere arbitrary exaction from one class while another class, which cannot be differentiated from it, is allowed to go untaxed. A life estate with the fee descending in the lineal line might well be more desirable than a life estate with remainder to collateral heirs or strangers to the blood. At any rate, there is a sufficient difference upon which the legislature could, without transcending its power, base a classification. It may be observed that as to the rate of tax to be imposed and the

amount of the exemption the beneficiaries are divided by the First Section into three classes, which, for purposes of designation, may be called—first, the lineals; second, the collaterals; and third, the strangers to the blood. It is not questioned in this case that the differences in relationship to the decedent have been properly used by the legislature as a just and legal basis for purposes of classification, and although the constitutionality of the statute has heretofore been attacked because of such classification, it has been sustained by this Court and by the Supreme Court of the United States.

Kochersperger vs. *Drake*, 167 Ill., 122.
Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283.

"Now, to exempt, by the second section, beneficiaries of the first class who are given only a life estate with remainder over to beneficiaries of the second or third class, is to apply the same principle of discrimination in favor of those standing nearest in relationship to the deceased owner. No life tenant falling within the second or third class is exempt, and the mere fact that life tenants of the first class, where the remainder is kept in the lineal line, are not included in the exemption does not render the statute unconstitutional for lack of uniformity as to the class upon which

it operates, as supposed by counsel. Section 2 does not interfere with the classification made by Section 1, but recognizes it, and excludes only from the operation of that section life tenants who are beneficiaries of the first class where the remainder is given to those of the second or third class—that is, to collateral heirs or strangers to the blood, or the body politic or corporate. It cannot be said, we think, that no reason whatever appears for the distinction made by this exemption. It may be regarded as a concession—a further exemption—to beneficiaries of the first class who are the last of their line to hold and enjoy the property; and even if it were one which the legislature had no power to make, that provision only would be void, leaving the rest of the act in full force. And such a construction would not affect the order of court appealed from nor aid appellants in their contention."

It is thus seen, as is so clearly pointed out by the Illinois Supreme Court, that the classification here complained of is not only based upon a reasonable ground and is clearly distinguished dy substantial differences from the other class, but that this classification made in Section 2 of the act, in which fall those exempted from the operation of the law, is in

harmony with the plan and theory of the law as a whole.

This court in its consideration of the act in question, in the case of

Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283, page of opinion 292, said:

"This brings us to the law in controversy. The appellant attacks both its principles and its provisions—its principles as necessarily arbitrary and its provisions as causing discriminations and creating inequality in the burden of taxation.

"Is the act open to this criticism? The clause of the fourteenth amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.'

Kentucky Railroad Tax Cases, 115 U. S., 321-337.

"It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which

it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.

Hayes vs. *Missouri*, 120 U. S., 68.

"Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustrations it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of the law has it concern.

MR. JUSTICE FIELD said in—

Mobile County vs. *Kimball*, 102 U. S., 691,

that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity.'

"The rule, therefore, is not a substitute for municipal law; it only prescribes that

that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operations on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B, it may subject A to a different rule of responsibility to servants than B, *Missouri Pacific Ry. Co.* vs. *Mackey*, 127 U. S., 205, to a different measure of damages than B, *Minneapolis and St. Louis Railway Co.* vs. *Beckwith*, 129 U. S., 26, and it permits special legislation in all its varieties.

Missouri Pacific Ry. Co. vs. *Mackey*, 127 U. S., 205.

Minneapolis and St. Louis Ry. Co. vs. *Herrick*, *id.* 210.

Duncan vs. *Missouri*, 152 U. S., 377.

"In other words, the State may distinguish, select and classify objects of legislation, and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition,' said Mr. Justice Bradley, in *Bell's Gap Rd. Co.* vs. *Pennsylvania*, 134 U. S., 232-237.

"And Mr. Justice Brewer; in *Gulf, Colorado and Santa Fe Railroad* vs. *Ellis*, 165 U. S., 150-165, after a careful consideration of many cases, said: 'It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.'

"Two principles, therefore, must be reconciled in the Illinois Inheritance Law if it is to be sustained, the equality of protection of the laws guaranteed by the Fourteenth Amendment, and the power of the State to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon 'some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection?' Legislation special in character is not forbidden by it, as we have seen. Treating mechanics as a class and giving them a lien for the amount of their work has been held reasonable. Charging a railroad corporation and not other corporations or persons with an attorney's fee has been held unreasonable, yet the former would seem to

be as much an exclusive favor as the latter an exclusive burden.

"Of taxation, and the case at bar is of taxation, Mr. Justice Bradley said in *Bell's Gap Rd. Co.* vs. *Pennsylvania*, 134 U. S., 232, and Mr. Chief Justice Fuller, in *Giozza* vs. *Tiernan*, 148 U. S., 637, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. The range of the State's power was expressed by Mr. Justice Bradley, as follows: 'It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only and not tax securities for payment of money, it may allow deductions for indebtedness or it may not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State framing their Constitution.'

"And so Mr. Justice MILLER, speaking for the Court in *Davidson* vs. *New Orleans*, 96 U. S., 97, 105, said: 'The Federal constitution imposes no restraints on the State in regard to unequal taxation.'

"The Court, through Mr. Justice LAMAR, in *Pacific Express Co.* vs. *Seibert*, 142 U. S., 339, was equally emphatic. He said on page 351, 'this court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or from being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principles of uniformity and equality in taxation and of a just adaptation of property to its burdens.' And it was said in *Merchants' Bank* vs. *Pennsylvania*, 167 U. S., 461: 'Indeed, this whole argument of a right under the Federal constitution to challenge the tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap Rd. Co.* vs. *Pennsylvania*.'

"There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons or things. Bearing these considerations in mind, we can solve the questions in controversy."

This comprehensive consideration of the application of the Fourteenth Amendment to the legislative discretion of a state and the foregoing analysis of the adjudicated cases before this distinguished tribunal make superfluous any other quotation from or citation of authorities by us, and we have but to apply the principles thus announced and the construc tions adopted by this court in the cases above reviewed to see that there is a clear distinction, based upon a reasonable and substantial difference, between the class which may be designated as life estates with remainder to the lineal descendants of the beneficiary, and the class which may be designated as life estates with remainder to the collateral heirs of the decedent or to the stranger in blood; that such difference clearly distinguishes one class from the other, and forms a correct basis for the classification made, and the law, operating alike upon all in each class, is not in conflict with the Federal constitution or the constitution of Illinois, but in harmony with both and valid.

This Court in its consideration of the constitutionality of the Illinois inheritance tax law in the

case *supra*, makes application of the rule by it above announced to the provisions of the act in question, and testing those provisions by that rule, page of opinion 300, said:

> "That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary, because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. The jurisdiction of courts is fixed by amounts. The right of appeal is. As was said at bar, the Congress of the United States has classified the right of suitors to come into the United States courts by amounts. Regarding these alone, there is the same inequality that is urged against classification of the Illinois law. All license laws and all specific taxes have in them an element of inequality, nevertheless they are universally imposed and their legality has never been questioned. We think the classification of the Illinois law

was in the power of the legislature to make, and the decree of the Circuit Court is affirmed."

II.

The constitutionality of the inheritance tax law of Illinois is challenged by counsel for plaintiffs in error, not because the legislature has by this act imposed upon plaintiffs in error a tax upon their successions to the estates left them by testator, but because it has excepted from the operations of the law persons enjoying privileges of succession who belong to another or, as counsel assert, the same, class.

It is a principle of law universally recognized by this and all the courts and particularly adhered to by the Supreme Court of Illinois that the provisions of the law which grant exemption from taxation shall be strictly construed and if any provision attempting an exception is inconsistent with the law as a whole it must fall.

By the inheritance tax law of Illinois it is seen that the law in general terms provides that a tax is imposed upon all enjoying the privilege of succession to an inheritance and that by a special express exception to this gen-

eral provision of the law life estates or estates for a term of years to a mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant, with the remainder to a collateral heir of the decedent or stranger in blood, is, among certain other specified bequests, exempted from the operation of the law. In the construction of this law to determine the force and effect of each of its provisions the whole law must be read and considered together. And in doing so in this case we find that by the general terms of the law a tax upon the privilege of succession would fall upon all were it not for the express exemption taking the class complained of by counsel for plaintiffs in error out of the operation of the law. This is manifest from an examination of the act. This, then, being true, it is likewise apparent that the objection of counsel for plaintiffs in error cannot be directed against the law which imposes a tax upon the privileges enjoyed by plaintiffs to succeed to the inheritances left them by testator, but can only be directed against the *exemption* in favor of those who are by the express exception to the law taken out of its

operation. It follows, thus, then plaintiffs in error are not harmed by the provisions of the law or by its application to them, and the tax imposed being supported by authority of the law the judgment of the Supreme Court of Illinois should be affirmed

The Court, in considering this case, upon this point (record 106) said:

> "It cannot be said, we think, that no reason whatever appears for the distinction made by this exemption; it may be recorded as a concession—a further exemption—to beneficiaries of the first class who are the last of their line to hold and enjoy the property; *and even if it were one which the legislarure haa no power to make that provision only would be void, leaving the rest of the act in full force; and such a construction would not affect the order of the Court appealed from nor aid appellants in their contention.*"

III.

We respectfully and earnestly contend that the constitutionality of the Illinois inheritance tax law with its various provisions, including the one assailed herein, has been heretofore elaborately argued before and carefully considered and fully sustained by this honorable Court and is not now open to review in this case.

In the case of—

Drake vs. *Kochersberger*, 167 Ill., 122,

the constitutionality of the Illinois inheritance tax law was carefully reviewed and sustained by the Supreme Court of Illinois, and this Court in the case of—

Magoun vs. *Illinois Trust and Savings Bank*, 170 U. S., 283,

as has been stated, fully considered all of the provisions of this law as tested by the Fourteenth Amendment to the constitution of the United States and likewise sustained the same in all of its parts. This last case was brought to this court and decided subsequent to the death of the testator in the case at bar.

In the original brief filed on behalf of counsel for plaintiffs in error in the case of *Magoun* vs. *Illinois Trust and Savings Bank*, *supra*, the constitutionality of the Illinois inheritance tax law was challenged upon the specific ground, among others, that the exemption as provided in section 2 of the act, which is the one and the only one advanced in the case at bar, operated to discriminate in

favor of some and against others of the same class.

Counsel there stated, page 8, original brief, the issue to be—

> "The point of constitutional law to be decided is whether or not, under the Fourteenth Amendment, the States can levy graduated or progressive taxes upon persons, property or privileges arbitrarily classified solely according to the amount or value of the property or privilege taxed, and whether or not exemptions of legacies as large as twenty thousand dollars, *and of estates for life and years, no matter how large or valuable, can be sustained.*"

An examination, in fact, of the original brief filed by counsel for plaintiffs in error in that case shows that this particular objection urged to the constitutionality of the law in the case at bar was there quite as fully argued and as earnestly insisted upon as here. (Brief and argument plaintiffs in error, pp. 7, 8, 59, 60, 68: *Magoun* vs. *Illinois Trust and Savings Bank*, *supra.*) And in the argument at bar made by one of the distinguished counsel on behalf of the plaintiffs in error in that case, who likewise appears in this, which oral argument was, by

leave of Court granted upon his motion, printed and filed and made a part of the record of the case, the exemption here complained of and provided by the exception to the general provision of the law in section 2 of the act, was specifically called to the attention of the Court and earnestly urged as one of the most objectionable provisions of the law and which should because of this feature be declared unconstitutional. (Oral argument by Mr. Guthrie, pp. 7, 8, 9, 26, 28, 30) And in the argument at bar by Mr. Harrison for plaintiffs in error in that case, likewise printed and filed of record the question as to whether or not the exemption provided by section 2 of the act in favor of life estates with remainder to collateral heirs of the decedent or strangers in blood invalidated the act, as earnestly urged then in that case as now in this, was pressed to the attention of this Court by that distinguished lawyer. (Argument of Mr. Harrison, pp. 57 and 58). And this Court, in its disposition of that case, while not specifically analyzing all of the objections urged against the law by counsel for plaintiffs in error, nevertheless, upon consideration of all the arguments made for and against the act

and the principles of law applicable thereto, held, on page of opinion 299:

> "Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment."

We submit to this honorable Court that not only is the judgment of the Supreme Court of the State of Illinois correct and in harmony with the requirements of the Fourteenth Amendment, and in harmony with the decisions of this Court, but that the very question here at issue was decided by this court in the case of *Magoun* vs. *Illinois Trust and Savings Bank* upon this very law and we respectfully ask that the judgment of the Supreme Court of Illinois be affirmed.

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